

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION
OF HAWAII

CHAPTER 2020

EVICTIION - PRACTICE AND PROCEDURE

Subchapter 1 General Provisions

§17-2020-1	Purpose
§17-2020-2	Definitions
§17-2020-3	Examiner
§17-2020-4	Asset limits
<u>§17-2020-5</u>	<u>Grounds for termination of tenancy and eviction</u>

Subchapter 2 Pre-Hearing Procedure

§17-2020-11	Notice of cause <u>for cases referred for eviction prior to June 28, 2002</u>
§17-2020-12	<u>Notice of cause for cases referred for eviction on or after June 28, 2002</u>
§17-2020- [12] 13	Notice of hearing
§17-2020- [13] 14	Request for subpoenas

Subchapter 3 Hearing Procedure

A. Conditions

§17-2020-21	Counsel
§17-2020-22	Motions
§17-2020-23	Waiver of procedure
§17-2020-24	Records

B. Hearings

§17-2020-31	Hearings
§17-2020-32	Default
<u>§17-2020-33</u>	<u>Curable and Non-Curable Violations.</u>

Subchapter 4 Appeals

§17-2020-41	<u>Appeals of contested case hearings</u> <u>referred for eviction prior to June</u> <u>28, 2002</u>
§17-2020-42	<u>Appeals of contested case hearings</u> <u>referred for eviction after June 28,</u> <u>2002</u>

Subchapter 5 Miscellaneous Provisions

§17-2020-51	Severability
§17-2020-52	Number
§17-2020-53	Termination of rental agreement based on Public Law 104-120

Historical Note: This chapter is substantially based upon Chapter 17-501, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 5/26/98; R 10/25/99], and Chapter 15-182, Hawaii Administrative Rules. [Eff 10/25/99; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-2020-1 Purpose. These rules shall govern the practice and procedure for terminating the tenancy of persons using or occupying any unit in a project owned or operated by the housing and community development corporation of Hawaii except for rental housing projects governed by chapter 15-173. These rules afford tenants an opportunity for a hearing if a tenant disputes any action by the corporation to evict the tenant from the tenant's unit. These rules shall be liberally ~~[interpreted]~~ construed to ensure that the rights of the parties are ~~[observed in a just and speedy determination of every hearing.]~~ preserved in a just and timely resolution of every hearing.
 [Eff 10/25/99; comp] (Auth: HRS §201G-5) (Imp: HRS §201G)

§17-2020-2 Definitions. As used in these rules, except otherwise required by context:

"Agreement" means any lease, rental agreement, permit, or license covering the use and occupation of any unit or other premises owned or controlled by the corporation.

"Alcohol abuse" means a tenant or any member of the tenant's household has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, or furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

"C.F.R." means the Code of Federal Regulations.

"Corporation" means the housing and community development corporation of Hawaii.

"Criminal activity" means the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in:

- (1) the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug

- with intent to manufacture, sell ,
distribute, or use the drug; or
(2) any illegal activity that has as one of its
elements the use, attempted use, or
threatened use of physical force substantial
enough to cause, or be reasonably likely to
cause, serious bodily injury or property
damage;

regardless of whether there has been an arrest or
conviction for such activity and without satisfying the
standard of proof used for a criminal conviction.

"Document" means written decisions, orders, and notices issued for the purposes of this chapter.

"Drug" means a controlled substance as defined in
section 102 of the Controlled Substances Act (21 U.S.C.
802).

"Examiner" means a trial examiner, ~~[or the]~~
hearing board or eviction board appointed by the corporation for the purposes of chapter 201G, HRS.

"Grievance hearing" means the hearing prescribed in the grievance procedure set forth in rules of the corporation.

"HRS" means the Hawaii Revised Statutes.

"Hearing" means a quasi-judicial proceeding in which the corporation prepares to terminate an agreement.

"Hearings clerk" means the person responsible for receiving, recording, and preserving the records of the examiner.

"Hearings officer" means the person representing
the corporation in a hearing."

"Party" means a person or agency as defined in section 201G-51, HRS.

"Presiding officer" means the trial examiner, ~~[or]~~
a member of the hearing board, or a member of the
eviction board duly elected by a majority of the board members to serve as its chairman.

"Project manager" means the corporation's representative assigned to manage projects in a management area or any other employee of the corporation specifically designated by position description.

"Tenant" means a person who is subject to eviction proceedings under this chapter.

"U.S.C." means the United States Code. [Eff
10/25/99; am and comp] (Auth: HRS
§§201G-59, 92-6) (Imp: HRS §201G-53)

§17-2020-3 Examiner. (a) Communications to the examiner may be mailed or delivered to the corporation's office in the respective county in care of the hearings clerk.

(b) When the examiner is a hearing board, or an eviction board, a quorum of members shall be present to validate any action taken.

(c) No employee of the corporation shall be an examiner, unless specifically designated by the corporation.

(d) All documents issued by the examiner may be executed by facsimile signature. [Eff:]
(Auth: HRS §§201G-59, 92-15) (Imp: HRS §201G-53)

§17-2020-4 Process service. (a) All documents issued for the purposes of this chapter ~~[may]~~ shall be served either:

- (1) Personally to the tenant or adult household member by a law enforcement officer of the State or county, or an officer appointed by the corporation; or
- (2) By certified mail return receipt requested; or
- (3) If personal service or service by certified mail cannot be effectuated, the document or documents may be served:
 - (i) By posting the document or documents on the unit occupied by the tenant and by first class mail to the party's last known address; or
 - (ii) By publication in a newspaper of general circulation and by first class mail.
- (b) Service upon a party shall be complete if:
 - (1) The party or the party's attorney is personally served;
 - (2) ~~[Mailed to the party's last known address by first class mail;]~~ The party signs the receipt for certified mail;

- ~~[(3) The party signs the receipt for certified mail]~~
- (3) The document or documents are posted on the unit occupied by the tenant and mailed to the party's last known address by first-class mail;
- (4) Upon publication in a newspaper of general circulation; or
- (5) By special order of the examiner, upon a finding that service by other means is not practicable, a document is posted on the unit occupied by the party.
[Eff:] (Auth: HRS §201G-59)
(Imp: HRS §201G-53)

§17-2020-5 Grounds for termination of tenancy and eviction. (a) The examiner shall determine whether there are sufficient grounds for termination of the rental agreement.

(b) The following constitutes grounds for termination of the rental agreement:

- (1) Serious or repeated violation of material terms of the rental agreement, including, but not limited to:
 - (A) Failure to make payments due under the rental agreement;
 - (B) Failure to fulfill household obligations as defined in the rental agreement.
- (2) Other good cause, including, but not limited to, the following:
 - (A) Criminal activity or alcohol abuse;
 - (B) Discovery after admission of facts that made the tenant ineligible;
 - (C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income; and
 - (D) Failure of a family member to comply with service requirement provisions of 24 C.F.R. part 960, subpart F; and
 - (E) Failure to accept the corporation's offer of a revision to the existing

rental agreement, subject to the
requirements of 24 C.F.R. 966.4(1).
[Eff: _____] (Auth: HRS §201G-59,
24 C.F.R §966.4(1)) (Imp: HRS §201G-55)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

§17-2020-11 Notice of cause for cases referred
for eviction prior to June 28, 2002. (a) Any
violation under section 201G-52, HRS, shall constitute
cause for the project managers within each county to
initiate eviction proceedings. The tenant shall be
notified in writing and the document shall state the
reason for and the date of the proposed termination of
the agreement. The document shall also inform the
tenant of the tenant's rights to reply to the
corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance
with the terms of the agreement.

(c) If the tenant fails to respond within the
time period prescribed by the notice of proposed
termination, the project manager shall submit a written
request to the examiner that the tenant be evicted.

[Eff: _____] (Auth: HRS §201G-59) (Imp:
HRS §201G-53)

§17-2020-12 Notice of cause for cases referred
for eviction on or after June 28, 2002. (a) Any
violation under section 201G-52, HRS, shall constitute
cause for the project managers within each county to
initiate eviction proceedings. The tenant shall be
notified in writing and the document shall state the
reason for and the date of the proposed termination of
the agreement. The document shall also inform the
tenant of the tenant's rights to reply to the
corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance
with the terms of the agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed termination, the project manager shall submit a written request to the examiner that the tenant be evicted.

(d) If the violation is for delinquent payment in rent,

- (1) The written notice shall conform to the requirements of section 201G-52(b), HRS; and
- (2) The corporation shall schedule a meeting with the tenant to discuss the delinquency.
- (3) If the tenant fails to attend the meeting and does not contact the corporation or the corporation's agents to reschedule the meeting, the corporation shall provide the tenant with a second written notice conforming to the requirements of section 201G-52(e), HRS.

(e) At the meeting, the corporation or its agent and the tenant shall complete, sign, and date a checklist conforming to the requirements of section 201G-52(c), HRS, to memorialize the meeting.

(f) If the tenant appears at the meeting, the corporation will consider whether the tenant's situation is appropriate for a reasonable payment plan. The corporation or its agent may consider but is not limited to considering the following factors to determine whether the tenant's situation is appropriate for a reasonable payment plan:

- (1) The amount of the delinquent balance;
- (2) The amount of tenant's monthly rent charge;
- (3) The tenant's household income;
- (4) Any other sources of income of the tenant;
- (5) The history of rent payment by the tenant;
- (6) Any history of other violations of the rental agreement by the tenant;
- (7) The cause of the delinquency; and
- (8) Any mitigating factors.

(g) The corporation or its agent may consider, but is not limited to considering, the following factors to determine if the payment plan is reasonable:

- (1) The tenant's household income;
- (2) Any other sources of income of the tenant;
- (3) Any other debts of the tenant;

(4) Whether the tenant can clear the delinquent balance within six months; and

(5) Any hardship on the tenant.

(h) If the corporation or its agent determines that the tenant will be unable to clear the delinquent balance within a six-month period, the tenant's situation is not appropriate for a reasonable payment plan.

(i) If the corporation or its agent determines that the tenant's situation is appropriate for a reasonable payment plan, one may be offered as agreed upon between the corporation or its agent and the tenant. A reasonable payment plan shall not exceed a period of six months.

(j) The corporation shall inform the tenant of its decision in writing. The written notice shall further notify the tenant of the tenant's right to request a grievance hearing within thirty days of receipt of the notice.

(k) In the event the tenant breaches the reasonable payment plan, the corporation or its agent shall proceed to terminate the tenant's tenancy by referring the matter to the hearings office to schedule a hearing before the eviction board.

[Eff:] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020- [11] 13 Notice of hearing. Notice of hearing shall meet the requirements of chapter 201G, HRS. [Eff:] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020- [13] 14 Request for subpoena. (a) Only an examiner or parties to the hearing may request the issuance of a subpoena, provided that subsection (b) shall be complied with. The examiner or the examiner's designated representative shall issue the subpoena.

(b) The request for issuance of a subpoena of a witness shall be in writing and shall state the name and address of the desired witness and the reasons why the testimony of the witness is material and relevant

to the issues in the hearing. The party requesting the subpoena shall pay to the witness the same fees and mileage as prescribed in chapter 607, HRS. The request for issuance of a subpoena duces tecum for documents and records shall be in writing. The party requesting the subpoena duces tecum for documents and records shall pay all copying costs. The request shall specify the particular document or record, or part thereof sought, and shall state the reasons why the document or record is material and relevant to the issues of the hearing. [Eff _____] (Auth: HRS §§201G-59, 607-12, 92-16) (Imp: HRS §201G-53)

SUBCHAPTER 3

HEARING PROCEDURE

A. Conditions

§17-2020-21 Counsel. (a) Unless otherwise directed by the presiding officer, one counsel for each party represented shall be permitted to conduct direct and cross examination of a witness, state and argue an objection or motion, and make opening or closing argument.

(b) A tenant may appear in the tenant's own behalf or with another person as the tenant may authorize. [Eff:] (Auth: HRS §§201G-59)
(Imp: HRS §201G-53)

§17-2020-22 Motions. (a) All motions shall state the grounds and shall set forth the relief or order sought. Motions need not be in writing.

(b) All motions shall be presented to the examiner at the commencement of the hearing. If a written motion is presented, a copy shall be provided to the opposing party.

(c) The opposing party may state opposition to any motion presented to the examiner. The examiner may consider all motions and opposing motions in executive session and shall rule on each motion when appropriate. [Eff:] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-23 Waiver of procedure. Upon agreement of the parties, any procedure in a hearing may be modified or waived and informal disposition may be made of any case by agreed settlement, consent order, or default. [Eff:] (Auth: HRS §§201G-59)
(Imp: HRS §201G-53)

§17-2020-24 Records. (a) The hearings clerk shall keep written summaries of all hearings. Neither

a full transcript nor recording of the hearing shall be required.

(b) All records of a hearing shall be confidential and released only at the direction of the examiner or by judicial order. [Eff:]
(Auth: HRS §§201G-59, 92-9, 92-6) (Imp: HRS §201G-53)

B. Hearings

§17-2020-31 Hearings. (a) In all hearings [a] the presiding officer shall preside. The vice-chairman of a hearing board or an eviction board shall preside at a hearing in the absence of the presiding officer.

(b) The presiding officer shall determine the order of appearance of the parties to a hearing and shall administer the oath to all witnesses as prescribed by section 621-12, HRS. The presiding officer may limit the time of each witness giving testimony upon a particular issue.

(c) Hearings shall be conducted in an informal manner unless otherwise required by law.

(d) The examiner may remove any person who disrupts a hearing.

(e) If a tenant, the tenant's attorney, or the tenant's representative is removed for disruptive conduct, the hearing may continue and a determination made based upon the available evidence and testimony presented.

(f) All hearings shall be confidential and closed to the public unless the tenant agrees otherwise.
[Eff:] (Auth: HRS §§201G-59, 92-6, 92-16) (Imp: HRS §201G-53)

§17-2020-32 Default. A tenant who fails to appear at a hearing after being duly notified may be found in default and the examiner may proceed with the hearing. [Eff:] (Auth: HRS §201G-59)
(Imp: HRS §201G-53)

§17-2020-33 Curable and Non-Curable Violations. (a) The examiner shall determine whether or not the violation of the rental agreement is curable by the

tenant. A violation is curable if the violation for which the tenant is being referred is a first offense and is not defined as a non-curable violation.

- (b) Non-curable violations include:
 - (1) Chronic or consistent violations of any material term of the rental agreement;
 - (2) A history of chronic or consistent rent delinquency;
 - (3) Violations of any material term of the rental agreement subsequent to a finding of violation of said term by a hearing or eviction board;
 - (4) Any violations that threaten the health or safety of the other residents or the corporation's employees or representatives;
 - (5) Any drug-related criminal activity occurring on or near the project premises;
 - (6) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the other residents or the corporation's employees or representatives;
 - (7) Where the tenant has received notice from the United States Department of Housing and Urban Development that the tenant is no longer eligible to remain in the unit.
- [Eff:] (Auth: HRS §201G-59)
(Imp: HRS §201G-55)

SUBCHAPTER 4

APPEALS

§17-2020-41 Appeals of contested case hearings referred for eviction prior to June 28, 2002. (a) An appeal of the decision of the examiner may be taken to the corporation as provided in section 201G-54, HRS. The appeal shall be in writing and may be mailed or delivered to the corporation's office at 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, in care of the hearings clerk. The appeal may be heard and decided by the corporation or an appeals board appointed by the corporation.

(b) The corporation shall give written notice of the appeal hearing to the tenant fixing the date, time, and place of the appeal hearing. The notice shall be given at least five days before the date set for the appeal hearing.

(c) A tenant who fails to appear at an appeals hearing after being duly notified may be found in default and the corporation may proceed with the hearing.

(d) The corporation's decision shall be based solely on the record of the examiners which may be orally summarized by the hearings officer.

(e) Any person aggrieved by the final decision and order of the corporation may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS. [Eff:] (Auth: HRS §§201G-54, 201G-59) (Imp: HRS §201G-53)

§17-2020-42 Appeals of contested case hearings referred for eviction on or after June 28, 2002. Any person aggrieved by the final decision and order of the examiner may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS. [Eff:] (Auth: §201G-59) (Imp: HRS §201G-53)

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

§17-2020-51 Severability. If any part, section, sentence, clause, or phrase of these rules or its application to any person or circumstance is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases or applications of these rules to other persons or circumstances shall not be affected. [Eff:] (Auth §201G-59) (Imp: HRS §201G-53)

§17-2020-52 Number. The use of all words used in the singular shall extend to and include the plural. [Eff:] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-53 Termination of rental agreement based on Public Law 104-120. The corporation may also terminate a rental agreement as provided for in section 15-190-[48] 59. [Eff:] (Auth: 42 U.S.C. §1437d; Pub. L. 104-120; §201G-59) (Imp: HRS §201G-53)

DEPARTMENT OF HUMAN SERVICES

The adoption of Chapter 17-2020, Hawaii Administrative Rules, on the Summary page dated _____, 2003 was adopted on _____, 2004 following public hearings held on _____ and _____, 2003, after public notice was given in the Midweek on _____, 2003 and in the _____ on _____, 2003, respectfully.

The adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHARLES A. STED
Chairperson
Housing and Community
Development
Corporation of Hawaii

APPROVED AS TO FORM:

Deputy Attorney General

LINDA LINGLE
Governor
State of Hawaii

Date: _____

Filed

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-2020
Hawaii Administrative Rules

_____, 2003

1. Chapter 17-2020, Hawaii Administrative Rules, entitled "Eviction - Practice and Procedure" is adopted.